

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1863 of 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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NEW NAGA GIGA - Appellant(s)
Versus
MAKIBEN VIRAM & 3 - Defendant(s)

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Appearance :

MR DD VYAS for Appellant(s) : 1,
MR GAURANG H BHATT for Defendant(s) : 1 - 2.
MR BR SHAH for Defendant(s) : 3,
MR SANDIP C SHAH for Defendant(s) : 3,
None for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 04/08/2006****ORAL JUDGMENT**

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal, Jamnagar passed in M.A.C.P. 49 of 1982 dated 30.04.1984.

2.0 The brief facts of the case are that on 11.09.1981, the deceased-Parvat Viram Mer was taking rest behind the truck owned by the present

appellant and driven by present opponent No.4 and when the opponent No.4 drove the truck to change the place of parking, the deceased was crushed and died. Therefore, present opponent No.1 and 2 being heirs and legal representatives of the deceased filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. On perusal of F.I.R. filed by one Kamal Krishnan (Exh.25) and evidence of opponent No.1 (Exh.20) it transpires that when opponent No.4 drove his truck to change the position of parking, he failed to notice deceased-Parvat sleeping under the rear part of the truck, and on account of that the accident in question took place. It may be noted that the factum of accident was not challenged by the original-respondents before the

Tribunal. The Tribunal, therefore, has rightly come to the conclusion that since the deceased was sleeping in an unsafe place i.e. under the rear part of the truck, there was negligence on the part of the opponent No.4 to the extent of $\frac{3}{4}$ and that of the deceased was $\frac{1}{4}$.

3.1 As regards the aspect of compensation, the Tribunal has looked into evidence available on record. Looking to the nature of injuries caused to the deceased and the fact that he was earning Rs. 400/- and was contributing Rs.300/- per month towards dependancy, the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellant for reduction of the amount of compensation.

3.2 As regards the contention of the learned Advocate for the appellant that the Tribunal ought not to have exonerated opponent No.3- Insurance Company from the liability to satisfy

the claim in question is concerned, it would be relevant to refer to a decision of this Court passed in the case of ***"Oriental Fire and General Insurance Co. Ltd. Vs. Rabari Gandu Punja & Ors."*** reported in 1981 (22) GLR 1161 wherein at Para-8 it was held as under,

"(8). A combined reading of sec.95(1)(b) (i) and sec.96(1) of the Motor Vehicles Act clearly shows that the statutory provisions enjoin the insurance company to compulsorily cover the risks of accident caused to third parties out of the user of the motor vehicle in a public place, subject of course, to cover all limits of liability in respect of any one accident as provided by sec.95(2). It is, therefore, apparent that before the insurance company can be satisfactorily made liable to make good the claim of parties, put, forward on account of the accidental injuries caused to third parties, it has to be shown that death or bodily injuries to any persons or third party was caused by or arising out of the use of the vehicle in a public place. If the death or bodily injury to third party is caused by use of the vehicle at a place which was not a public place, statutory requirements of sec. 96(1)(b)(i) to cover such risk would not arise at all. It is clear that before an insurance company can be satisfactorily made liable to answer claim for damages arising out of the accidental injuries caused to a third party on account of the use of the insured vehicle, it must be shown that the vehicle was driven in a rash or negligent manner

in a public place or the root cause of the accident must have originated during the time when the vehicle was used in a public place and if that fact is established, the further question whether such rash or negligent act may have injured innocent third party, at a place which may not be a public place, would not be strictly relevant for the purpose of deciding the statutory liability of the Insurance company for covering such risk of accident."

3.3 In the case on hand, on perusal of F.I.R. Filed by one Kamal Krishnan (Exh.25), it clearly transpires that when deceased-Parvat was taking rest under the rear part of the truck in the premises of Orient Boxite Company, the opponent No.4 drove the truck to change its place of parking and at that time accident took place. Hence, in view of the fact that the accident in question had taken place at a private place where the general public has no right of access and in view of the decision of this Court in the case of **"Oriental Fire and General Insurance Co. Ltd."**(Supra)the Tribunal is justified in exonerating the opponent No.3-Insurance Company from the liability to pay compensation.

3.4 I am, therefore, in complete agreement with the reasonings given and the findings arrived at by the Tribunal and, hence, do not find any reason to interfere in this appeal.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri, J.)

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